LIBRARY
SUPREME COURT, U. S.

FILED
OCT 9 1967
JOHN F. DAVIS, CLERK

No. 707

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

BRASWELL MOTOR FREIGHT LINES, INC.,
Appellant

v.

DIXIE HIGHWAY EXPRESS, INC., ET AL, *Appellees*

On Appeal From the United States District Court for the
Southern District of Mississippi

Jurisdictional Statement

PHILLIPS & PETERS
1819 Guaranty National Bank Bldg.
Jackson, Mississippi
CHRISTOPHER & BAILEY
T. S. CHRISTOPHER
2412 Continental Life Bldg.
Fort Worth, Texas 76102
Attorneys for Appellant
Braswell Motor Freight Lines, Inc.

Fort Worth Brief Printing Co., 610 S. Jennings Street Phone ED 2-4070

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

BRASWELL MOTOR FREIGHT LINES, INC.,
Appellant

v.

DIXIE HIGHWAY EXPRESS, INC., ET AL, *Appellees*

On Appeal From the United States District Court for the Southern District of Mississippi

Jurisdictional Statement

Braswell Motor Freight Lines, Inc. intervening defendant below, Appellant here, adopts as its own the Jurisdictional Statement filed by the United States of America and Interstate Commerce Commission, Appellants, such adoption being in all of its parts, including *questions presented, statement* which follows, and *conclusion.*

APPELLANT BRASWELL MOTOR FREIGHT LINES, INC., INTEREST

Braswell Motor Freight Lines, Inc., perfected its appeal to this Court.

Appellant has operated as a motor common carrier of general commodities since early May of 1935. The application out of which this judicial review of the decision of Appellant Commission arose was filed with

said Commission on April 28, 1960. Hearings were begun before a Joint Board in December of 1960. This hearing lasted for more than fourteen weeks. Your Appellant (as applicant) was supported by 293 witnesses representing more than 300 businesses. 100 M.C.C. 482 (489). The Joint Board decision was adverse to your Appellant. Division 1 of the Interstate Commerce Commission, an appellate division, reversed. 95 M.C.C. 457. Protesting carriers, Appellees here, filed petitions for reconsideration which were denied. This litigation ensued.

The Interstate Commerce Commission record before Appellate Division 1, upon which Division 1 acted, approximated 10,000 pages of oral evidence and some 750 exhibits. See that record which is now before your Honorable Court. The Statutory Court reversed and remanded. 242 Fed.Supp. 1016. The full Commission reconsidered. In its Report and Order, 100 M.C.C. 482-604, the Commission, on reconsideration, considered every facet measurable in terms of proof of convenience and necessity under applicable statutory criteria. In the voluminous record referred to, and the Court may take a look for verification, every facet had been carefully explored in detail, every complaint of the protestants (Appellees) and the trial court's criticisms weighed. Only then did the full Commission, in the exercise of its expertise, affirm its appellate division and authorize issuance of a certificate of convenience and necessity to your Appellant.

A motion to enforce the prior judgment was filed, and the trial court granted said motion. See Appen-

dices A through G inclusive of the United States and Interstate Commerce Commission Jurisdictional Statement.

The trial court's second opinion and judgment utterly and completely misapplied statutory standards and also went far afield in the exercise of the functions of a reviewing court and undertook to prescribe a rule of conduct for observance by the Interstate Commerce Commission, in application proceedings such as this, far beyond the power of the court to do.

This Appellant, Braswell Motor Freight Lines, Inc., is vitally affected. It has a highly valuable permissive right at stake.

CONCLUSION

The decision of the trial court is clearly in conflict with statutory standards and prior decision of this Court and should be summarily reversed. This Appellant relies on the statutes and the decisions cited by the United States and the Interstate Commerce Commission.

Respectfully submitted,

PHILLIPS & PETERS
1819 Guaranty National Bank Bldg.
Jackson, Mississippi

CHRISTOPHER & BAILEY
T. S. CHRISTOPHER
2412 Continental Life Bldg.
Fort Worth, Texas 76102
Attorneys for Appellant,
Braswell Motor Freight Lines, Inc.

PROOF OF SERVICE

I, T. S. Christopher, one of the attorneys for Braswell Motor Freight Lines, Inc., an Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 4th day of October, 1967, I served copies of the foregoing jurisdictional Statement on the several parties to this action as follows:

1. On the United States, by mailing copies thereof, in duly addressed envelopes, with air mail postage prepaid, to Robert E. Hauberg, United States Attorney, Jackson, Mississippi; to the Solicitor General of the United States, Department of Justice, Washington, D. C.; to Honorable Donald F. Turner, Assistant Attorney General, Department of Justice, Washington, D. C.; and to Honorable John H. D. Wigger, Antitrust Division, Department of Justice, Washington, D. C.

2. On the Interstate Commerce Commission, by mailing copies thereof, in duly addressed envelopes, with air mail postage prepaid, to Honorable Robert W. Ginnane, General Counsel, Interstate Commerce Commission, Washington, D. C.; to Hon. Leonard S. Goodman, Assistant General Counsel, Interstate Commerce Commission, Washington, D. C.; and to Honorable Betty Jo Christian, Attorney, Interstate Commerce Commission, Washington, D. C.

3. On the Appellees herein, by mailing copies thereof, in duly addressed envelopes, with air mail postage

prepaid, to Phineas Stevens, Esq., Butler, Snow, O'Mara, Stevens & Cannada, 700 Petroleum Building, Jackson, Mississippi 39201; to R. J. Reynolds, Jr., Esq. and R. J. Reynolds III, Esq., Reynolds and Reynolds, 403 Healey Building, Atlanta, Georgia 30303; to James W. Wrape, Esq. and Robert E. Joyner, Esq., Wrape & Hernley, 2111 Sterick Building, Memphis, Tennessee 38103; to Guy H. Postell, Esq., Monty T. Schumacher, Esq. and Frank Hall, Esq., 1375 Peachtree Street, N.E., Atlanta, Georgia 30309; to Bates Block, Esq. and Allen Post, Esq., Hansell, Post, Brandon & Dorsey, 600 First National Bank Building, Atlanta, Georgia 30303; to Wentworth Griffin, Esq., Reeder, Griffin & Dysart, 1221 Baltimore Avenue, Kansas City, Missouri 64015; to Frank M. Garrison, Esq., P. O. Box 1120, Lubbock, Texas 77008; to W. D. Benson, Jr., Esq., 9th Floor, Citizens Tower, Citizens National Bank Building, Lubbock, Texas 77001; to Maurice F. Bishop, Esq. and John P. Carlton, Esq., Bishop & Carlton, 327 Frank Nelson Building, Birmingham, Alabama 35203; to Dudley W. Conner, Esq., Conner Building, Hattiesburg, Mississippi 39401; and to James W. Nisbet, Esq. and Ed White, Esq., 280 Union Station Building, Chicago, Illinois 60606; to James L. Given, Esq. and James J. Williams, Esq., 1025 Connecticut Avenue, N.W., Washington, D. C. 20036; to William O. Turney, Esq. and Anthony C. Vance, Esq., Turney, Major, Markham & Sherfy, 2001 Massachusetts Avenue, N.W., Washington, D. C. 20036; and to Drew L. Carraway, Esq. and

John S. Fessenden, Esq., Rice, Carpenter & Carraway,
618 Perpetual Building, Washington, D. C. 20004.

T. S. Christopher
Attorney
2412 Continental Life Bldg.
Fort Worth, Texas 76102